

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

TABORA SUB-REGISTRY

CRIMINAL SESSION CASE NO. 92 OF 2023

THE REPUBLIC

VERSUS

RAMADHANI S/O HAMISI

JUDGMENT

18/12/2023 & 08/02/2024

MANGO, J

The accused person Ramadhani s/o Hamisi was indicted in this Court for the offence of Murder contrary to sections 196 and 197 of the Penal Code [Cap 16 R.E 2022]. The prosecution contended that on the 2nd day of March 2022 at Kikungu Village within Sikonge District in Tabora Region, the accused murdered one Upendo d/o Japhet.

The information was read to the accused person who pleaded not guilty. To prove its case, the prosecution called eight (8) witnesses and two exhibits (exhibits P1 and P2) were admitted during the hearing.

In determining this case, I bear in mind the established principles of the law that the burden of proof is upon the prosecution to prove the guilt of the accused person beyond reasonable doubt. The offence of murder has mainly four ingredients which must be proved beyond reasonable doubt. **One**, there is a death of a Person. **two**, the death was caused by an unlawful act or omission of the

accused person(s). **Three**, the act causing the death of the deceased was accompanied by malice aforethought and **Four**, that it is the accused persons who caused the death of the deceased whether directly or indirectly. The death can be caused by the accused alone or in conspiracy or in common intention with others.

I am also mindful of the duty to evaluate all the evidence on record both for prosecution and defence so that I can be able to determine whether the offence for which the accused person was indicted has been proven to the required standard.

At the hearing, the prosecution was served by learned State Attorneys Ms Aneth Makunja and Mr Steven Mnzava who were joined by Mr. Merito Ukongoji and Mr. Nurdin Mmari on the later stage of the case. The accused enjoyed legal services of Mr Hassan Killingo and Mr Kanani Chombala learned advocates fended for the accused.

According to the prosecution's evidence as adduced by PW1, Cleophas John Kileo, is that on 02/03/2022 around 7:00 am he was awakened by a phone call from an unknown number, a caller who identified himself as Ramadhani wanted to speak to Upendo Japhet (the deceased). The said Ramadhani talked to the deceased and informed her that he was going to visit her and by 10:00 am Ramadhani arrived at their home on a bicycle. The deceased introduced him as her in-law, a sibling of the father of her youngest child.

PW1 stated further that, the deceased cooked food for Ramadhani, and they ate together and after the meal, at around 4:00

pm Ramadhani asked for some water so that he could take bath and after that, he left the house to his home. He also gave a ride to the deceased who went to fetch firewood. PW1 added that at 7:00 pm he was informed by his siblings that the deceased had not returned home since she left with the in-law. When he called Ramadhani to ask about the deceased, he answered that he left her at the Mangoes farm.

The following morning, they raised an alarm and upon search the body of the deceased was found in the forest slaughtered on the neck. The matter was reported to the Police.

The death of the deceased was confirmed by PW3, Elia Paulo Mapila, a medical officer who examined the deceased's body after being identified by relatives and filled out a post-mortem report which was admitted as Exhibit P1. Upon examining the body, PW3 revealed that it had a long cut wound on the left ear and, a deep cut wound on the fore part of the neck which he suggested to have been caused by a sharp object. His opinion on the cause of death was severe blood loss and respiratory challenges.

Also, another witness who confirmed the death of Upendo Japhet was PW7, G.2653 D/Coplo Erick, a Police Officer who drew the sketch map of the scene of crime (Exhibit P2). This witness told the Court that he was assigned a duty by OC-CID to visit a scene of crime where Upendo Japhet was murdered. The map indicated the place where the body was found and the items that were found in the area.

On his part, PW4, John Kamilius Kileo, informed the court that he had a relationship with the deceased and they were blessed with one child namely Cleophas. Their son was staying with his mother, the late Upendo Japhet. On the particular day he was told by his son Cleophas that his mother Upendo Japhet had not returned home since when he left to collect firewood. He inquired as to who accompanied her to collect firewood and he was told that, she was given a ride by her in-law who had visited them since morning. They reported to government leaders who advised them to look for her in nearby places. The following morning, they raised an alarm so that villagers could gather and assist in the search then at around noon he received a call informing him that Upendo was found dead.

PW5, Nathan Amon Kagoso, who introduced himself as the deceased's brother told the court that on 02/03/2022 he was informed about his sister's disappearance that she left home with a visitor and she never came back. The following day he arrived at his sister's place and joined other people at a place where the deceased's body was found. This witness told the Court that he didn't know what caused the death of his sister. On cross-examination, PW5 stated that his sister had quarrels with his ex-husband, Ezekiel, who did not attend the burial.

No one had been arrested in connection to the murder incident until 06/04/2022. On that day, the accused was identified by the deceased's son (PW1) at Sikonge Madukani area as the person who had accompanied the deceased on the fateful day. The son sought

the assistance of PW2 who arrested the accused and immediately took him to the police station.

PW6, E6650 D/SGT Magori, who was the investigator testified that after getting some information from the deceased's children that he was with Ramadhani he tried to call him by phone but it was not reachable. He followed him to his residence at Mibono Ward but he couldn't find him that is why he suspected him to be responsible for the deceased's death. He continued to investigate with the assistance of PW1 (deceased's son) until 06/04/2022 when the accused was arrested.

He stated further that he interrogated the accused who gave him the entire picture of the occasions. The accused told him that he was instructed by a person called Shija Masanja who wanted to kill the deceased and at the time the Shija Masanja was planning to escape. They travelled to Kitunda together with the accused to search for the perpetrator but they didn't find him. They came back from Kitunda area the following day that is, 07/04/2022 at around 11:00 and he handed the accused to another officer who recorded the cautioned statement.

PW8 WP 7544 D/Cpl Fatuma testified that on 07/04/2022 the accused Ramadhani Hamis was brought to her office by D/Sgt Magori for recording cautioned statement. She testified further that, in an interview, the accused confessed to having killed Upendo together with Shija Masanja as he held the deceased legs while Shija Masanja slaughtered the neck. The admission of the accused's

cautioned statement was rejected by this Court for being recorded outside of the prescribed time.

In his defence, the accused person disputed committing the offence, he further disputed knowing the deceased and Masanja Shija. He went on to state that on the alleged date of incident of murder, he was at home harvesting tobacco. He alleged that, on the date of his arrest, 06/04/2022 he was at Sikonge preparing tobacco packaging. Further, the accused stated that he has never been to Kikuyu village and none of his relatives have married from Kikuyu. He prayed the Court to set him free.

Having examined the evidence from both parties in the case, the pivotal question now arises: Whether it is ascertained beyond reasonable doubt based on the prosecution's evidence that, the accused person is responsible for the offence of murder. As stated in the first paragraphs of this judgement, for the offence of murder to be considered to have been proved beyond reasonable doubts, the following elements must be proved. That the deceased is really dead; That the death was caused by someone unlawfully; That there was malice aforethought and that, the accused person directly or indirectly took part in the commission of the offence. (See the case of **Anthony Kinanila and Another Versus Republic** (Criminal Appeal No. 83 of 2021[2022] TZCA356(16 June 2022)).

From evidence gathered in prosecution's case it is not disputed that the deceased, Upendo Japhet died unnatural death as she was slaughtered as per the testimony of PW1, PW7 and exhibit P1, post-mortem examination report. Malice can also be established by the

fact that she had a deep cut wound on her neck, a very sensitive part of human body, which suggests that the person who inflicted such wound had an intention of killing her. The only relevant issue in this case is whether the accused is responsible with the deceased's death. While the accused denied to have any responsibility with the deceased's death, the prosecution availed the Court with circumstantial evidence from PW1 who allege that the accused was the last person to be seen with the deceased.

My thorough consideration of the testimony of PW1 reveals that, his evidence is based on suspicions and he did not establish beyond reasonable doubts that the accused person is the person who allegedly visited their home on the incident day and that, he has his hand in the murder of the deceased. I hold so because, there is no eye witness to the murder of the deceased. The only reason that caused the arrest of the accused, is suspicion that he was the person who visited the deceased home on the incident day and left with the deceased, that is, the last person to be with the deceased before her brutal killing. PW1 stated clearly that, he is not familiar with the person who visited their house as he merely saw him once on the date of the alleged visit. He has not described physical appearance of the accused prior to his arrest to clear doubts regarding the identification of the accused person. This raises doubts as to whether the accused is the person who visited the deceased's home on the incident day and probably has a hand in the murder of the deceased. What remains is suspicions that it might be the accused with no

reliable evidence to prove the same. It is well settled principle that suspicion however grave cannot led to conviction

Another piece of evidence that was capable of pointing an accusing finger to the accused was the accused confession recorded by PW8, WP 7544 D/Coplo Fatuma and the testimony of the investigator, PW6. The Cautioned was not admitted by the Court on the reason that it was recorded beyond prescribed time limits. In such circumstances, I cannot write on the contradictions contained therein.

My analysis of the testimony of the investigator reveals that he has not investigated well the case. I hold so because, among the issues tabled to him as an investigator is the phone number allegedly used by the culprit to communicate with the deceased on the date she was murdered. Despite having the phone number, the investigator did not bother to gather information regarding particulars of registration of the said number nor the place where the holder of the number was located. All those particulars would have been easily assisted the investigator not only to arrest the accused person but also to establish the holder of the phone number who is alleged to have his hand in the murder of the deceased. The investigation gap made the prosecution to fail to prove accusations levelled against the accused on the required legal standards.

For those reasons, I find the accused not guilty of the offence charged and he is hereby acquitted. The accused be released from remand custody immediately unless held for other lawful reasons.

Dated at Tabora this 8th day of February 2025



A handwritten signature in blue ink, appearing to read "Z. D. Mango", is written over a set of horizontal dashed lines.

Z. D. MANGO
JUDGE

Right of Appeal explained

